

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 03-0187P**

**Income Tax**

**Periods Ending November 1, 1997 Through October 30, 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-5-1; 45 IAC 15-11-2

The taxpayer protests the assessment of a penalty.

**STATEMENT OF FACTS**

The taxpayer operates retail jewelry stores in Indiana.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer requests the penalty assessment be abated. The taxpayer states,

We respectfully request an abatement of the penalty amounts due to reasonable cause and timely payment/filing history.

45 IAC 15-11-2(b) states:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The auditor contends that the taxpayer was negligent since it failed to accurately report taxable income. Under IC 6-8.1-5-1 the burden of proof is on the taxpayer and the Department’s assessment is considered as *prima facie* valid. The taxpayer offers no arguments or evidence, and merely asserts “reasonable cause.” As such, the taxpayer’s penalty protest is denied.

### **FINDING**

The taxpayer’s penalty protest is denied.

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